

By way of background, Mr. Kennedy submits this affidavit with over 15 years experience in the field of Histology and over 10 years experience in the field of tissue processors. Mr. Kennedy estimates that approximately 5% of processed tissue sample need to be reprocessed. See ¶4 of Declaration of Thomas G. Kennedy Pursuant to 37 C.F.R. §1.132. This is a significant percentage given the large number of tissue samples processed. There are several reasons for reprocessing the tissue samples including: (1) failure of the tissue processing machine; (2) overly fatty tissue sample; or (3) desire to rehydrate tissue. Without the claimed present invention, a histologist is forced to oversee the manually reprocessing of the tissue, which may take up to 6 hours. See ¶5 of Declaration of Thomas G. Kennedy Pursuant to 37 C.F.R. §1.132. This is clearly a waste of resources and possibly results in delayed diagnoses. See ¶6 of Declaration of Thomas G. Kennedy Pursuant to 37 C.F.R. §1.132. Given that there is a clear need of automated reprocessing (approximately 5% of processed tissue samples), that there is a significant waste of histologist resources, that there is the potential for delayed diagnoses, and that automated processing of tissue samples has been performed since the mid-1950s, there is a long-felt need in the industry for the invention as currently claimed. Further, Mr. Kennedy submits evidence of copying by the industry. Thermo Shandon, Inc. (part of Thermo Electric Corp.) sells products for tissue processors. It also sells a product which performs reverse processing, as shown in the enclosure to the declaration. Applicants thus believe that based on long-felt need and copying by others, the objective evidence supports that the claims as currently drafted are patentable over the cited art.

**CONCLUSION**

If for any reason an interview would be helpful to resolve any remaining issues, the Examiner is requested to contact the undersigned attorney at (312) 913-0001.

Respectfully submitted,

**McDonnell Boehnen Hulbert & Berghoff**

Dated: January 29, 2002

By: 

Amir N. Penn  
Reg. No. 40,767  
Attorney for Applicant

McDONNELL BOEHNEN  
HULBERT & BERGHOFF  
300 South Wacker Drive, Suite 3200  
Chicago, Illinois 60606  
(312) 913-0001